IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1578 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHATURBHAI NATHABHAI PARMAR

Versus

DIVISIONAL CONTROLLER GSRTC

Appearance:

1. Special Civil Application No. 1578 of 1998

MR JS BRAHMBHATT for Petitioner No. 1

MRS VASAVDATTA BHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Brahmbhatt for the petitioner and Ms. Vasavdatta Bhatt for the respondent corporation. In this petition, rule was issued by this court on 6th April, 1999.

The petitioner is challenging the order passed by the Labour Court concerned in Recovery Application No. 274 of 1990 dated 21st March, 1997. Brahmbhatt has submitted that the tribunal has passed award in complaint No. 15 of 1984 (Old No. 116 of 1982) dated 3rd May, 1986 wherein the petitioner has been ordered to be reinstated in service w.e.f. 20th September, 1982 and the period from the date of dismissal 23rd May, 1980 to 19th September, 1982 has been ordered to be treated as Leave Without Pay. Therefore, the tribunal has granted back wages with effect from 20th September, 1982 till the date of the award and the said amount has not been paid to the petitioner. On the contrary, the corporation has issued an order on 10th September, 1986 bearing No. 956 of 1986 wherein it has been mentioned that the petitioner is not entitled to the amount of back wages from 20th September, 1982 to 18th July, 1986 and, therefore, recovery application was filed by the petitioner before the labour court being recovery application no. 274 of 1990 wherein the labour court has rejected the said application on 21st March, 1997only on the ground of limitation that the petitioner has approached the labour court after the period of about four years. He has submitted that the labour court has not examined the merits of the matter and the application was filed under section 33-C (2) of the Industrial Disputes Act, 1947 wherein period of limitation has not been prescribed for filing of such an application and, therefore, the labour court has committed gross error in rejecting the recovery application on such ground. He has submitted that the tribunal has while passing the award, granted the reinstatement with effect from 20th September, 1982 and, therefore, the petitioner is entitled for such wages from that date onward and this aspect has not been examined by the tribunal while rejecting the application on that ground. On the other hand, learned advocate Ms. Bhatt for the respondent corporation has submitted that there is no clear directions issued by the tribunal that the back wages has been granted to the petitioner and the labour court was, therefore, right in rejecting the recovery application filed by the petitioner after the delay of about four years and, therefore, there is no substance in this petition.

I have considered the submissions made by both the learned advocates. Recovery application has been filed by the petitioner before the labour court under section 33-C (2) of the Industrial Disputes Act, 1947 wherein no period has been prescribed for filing such an application. This aspect has been examined by the

Division Bench of this Court in case of Natvarlal A. Shah versus ESI Scheme reported in 2001 (3) GLR 2474. Relevant para 8 and 9 of the said decision are reproduced as under:

> 8. Making an application under section 33C(2) of the ID Act, the appellant claimed the aforesaid amount towards the overtime dues which were not disputed by the other side. It appears that the learned single Judge has rejected the claim and has set aside the order of the Labour Court, mainly, on the ground of making such a claim before the Labor Court late. In other words, the delay is held to be fatal in claiming the overtime amount. In our opinion, the approach of the learned single Judge, with due respect, is not in consonance with or compatible to the relevant proposition of law on this score. In our opinion, the very aim, design and desideratum of the provisions of sec. 33C(2) of the ID Act, while viewed in the light of the benevolent legislation, and that too, in absence of any specific provision with regard to prescription of time for the recovery of amount with the help of section 33C(2), cannot be construed to limit and circumscribe the right of the workman for the recovery of the legitimate dues payable by the master or the management concerned. In our opinion, therefore, rejection of the claim in the impugned judgment of the learned single Judge on the ground of delay is not justified. We may make it clear that failure of the legislature to make any provision cannot be deemed to be an accidental omission. In the facts and circumstances and keeping in mind the benign provisions, of a weaker sections of the society, it would be legitimate to infer that the Parliament in its wisdom has deliberately did not provide for any limitation under Section 33C(2). Even from the different perception, a workman or a person who is the beneficiary under Sec. 33C(2) of the I.D. Act, hails from a lower strata of the society and he would not be conscious of the period of limitation for the recovery of legitimate dues. In all probabilities, this may be one of the reasons, Parliament has not prescribed the period of limitation for the recovery of said dues while incorporating provisions in sec. 33C(2) of the I.D. Act.

9. The view, which we are inclined to take, at this juncture, is very much reinforced by host of decisions and pronouncements of the Apex Court. However, we cannot resist the temptation of mentioning two decisions, at this juncture;

(1) Decision rendered in Bombay Gas Company Ltd. v. Gopal Bhiva AIR 1964 SC 752.

(2) Decision rendered by the Apex Court in Punjab Cooperative Bank Ltd. v. R.S. Bhatia, 1975 (2) LLJ 373.

We have, therefore, no hesitation in finding that the appellant, original applicant workman is entitled to the amount due and payable towards arrears of overtime by the respondent Corporation, and, therefore, while reversing the order of the learned single Judge, the order of the Labour Court is required to be restored."

In view of the observations made by the Division Bench of this Court in aforesaid decision and also considering the relevant provisions of section 33-C (2) of the Act, according to my opinion, the labour court was in error in rejecting the said recovery application solely on the ground of limitation. The labour court has committed an error in not deciding the said application on merits and, therefore, order passed by the labour court is required to be quashed and set aside while remanding the matter to the labour court for being decided on merits and in accordance with law.

In the result, this petition is allowed. The order passed by the labour court, Baroda in Recovery Application NO. 274 of 1990 dated 21st March, 1997 is hereby quashed and set aside and the matter is remanded back to the labour court concerned with a direction to the labour court concerned to decide the said recovery application no. 274 of 1990 on merits and in accordance with law as expeditiously as possible, preferably within six months from the date of receipt of copy of this order after giving reasonable opportunity to both the parties. Rule is made absolute in terms indicated hereinabove with no order as to costs.

3.5.2002. (H.K. Rathod,J.)

Vyas